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% 01.12.2010

Present: Mr. Sanjeev Sabharwal, Advocate for the appellant/Revenue.
Mr. Piyush Kaushik, Advocate for the respondent assessee.

+CM APPL. 21107/2010

* The delay of 90 days in refilling the appeal is condoned for the reasons stated in the application.

Application stands disposed of.

+ITA 1866/2010

* In the return filed by the assessee interest accrued on FDR was not offered for tax. While making that addition, the Assessing Officer also initiated penalty proceedings by issuing show cause notice to the assessee and ultimately passed the orders imposing penalty of ₹ 7.50 lacs upon the assessee under Section 271 (1)(c) of the Act.

The CIT (A) deleted this penalty and order of the CIT (A) has been affirmed by the ITAT, *inter alia*, observing as under:-

“We have considered the facts of the case and the submissions made before us, in the appellate order, the learned CIT (Appeals) mentioned that the assessee computed pre-operative expenses after deducting interest income of ₹ 20,53,666/-. This facts was shown in the balance-sheet filed alongwith the return of income. However, the AO held that interest of ₹ 20,53,666/- could not be adjusted against pre-operative expenses as claimed by the assessee. The claim made by the assessee was based upon a few decisions of the court, but it was not accepted by the



AO. That does not mean that there was any non-disclosure material facts, which could warrant levy of penalty. The learned DR could not controvert the aforesaid factual finding of the learned CIT (Appeals). Thus, the facts are that a claim was made in the account that interest amounting to ₹ 20,53,666/- has been taken into consideration for working out pre-operative expenses of ₹ 7,43,79,256/-. Accordingly, this income was not shown as liable to be taxed under the residuary head. The claim was based upon some decisions, which may not have been accepted by the AO or the appellate authority. However, that does not mean that the assessee either concealed income or furnished inaccurate particulars of income. It could also not be said that the assessee could not substantiate his explanation for the reason that there could be a genuine difference of opinion whether the interest was to be taxed or it was to be reduced from the cost of asset. Therefore, which requires correction from us.”

It is clear from above that there was no concealment on the part of the assessee, and in these circumstances, penalty could not be imposed. No question of law arises for determination and accordingly this appeal is dismissed.


A.K. SIKRI, J.


SURESH KAIT, J.

DECEMBER 01, 2010/skb